

## **APPENDIX - 7**

Restatement of Trusts 2d, §126, cmt. (a) (1959)

**Illustration:**

3. A bequeaths property to B in trust to dispose of it for such charitable or other purposes as he shall think fit. Unless the will is interpreted in the light of all the circumstances as manifesting an intention to permit B to apply the property for his own benefit, B does not take the property beneficially, but the rule stated in § 123 is applicable.

*d. Where the legatee is the executor.* The fact that the person to whom property is bequeathed is named as executor is some indication that he is not intended to take the legacy beneficially, but it is not conclusive. See Restatement of Property, § 323, Comment *e*.

**§ 126. Incidental Beneficiary**

**A person is not a beneficiary of a trust if the settlor does not manifest an intention to give him a beneficial interest, although he may incidentally benefit from the performance of the trust.**

See Reporter's Note.

**Comment:**

*a. Who are beneficiaries.* The beneficiaries of a trust include only the persons upon whom the settlor manifested an intention to confer a beneficial interest under the trust, or their successors in interest. Other persons, although they may benefit from the performance of the trust, are not beneficiaries of the trust and cannot enforce it.

**Illustrations:**

1. A bequeaths \$10,000 to B upon trust to invest the money in bonds of the C corporation and to pay the income to D during his lifetime and the principal to E on D's death. The C corporation is not a beneficiary of the trust and cannot compel B to purchase the bonds.

2. A bequeaths a going business to B in trust for C and directs B to pay out of the trust property any debts he may properly incur in the administration of the trust. B incurs such a debt to D. D is not a beneficiary of the trust. (As to the rights of D, see §§ 261-279.)

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3. A, who is about to leave the country for a year and who is solvent, pays \$1000 to B and directs B to use the money in paying any debts which A has incurred. A is the beneficiary of the trust and his creditors are not beneficiaries. (As to the rights of creditors where a person makes an assignment for the benefit of his creditors, see § 330, Comments *g, h.*)

4. A bequeaths to B property in trust to apply as much of it as B shall judge proper annually for the support of C, A's insane daughter, provided that the town of X, in which C resides, pays a reasonable sum annually so that C can live with her friends, and in case C should become sane to convey the property to her. The town of X is not a beneficiary of the trust and cannot maintain a suit to compel the trustee to perform the trust.

5. A bequeaths money to B in trust to apply the income to the education of C in a specified private school. The proprietor of the school is not a beneficiary of the trust and cannot compel B to send C to the school and is not entitled to maintain an action against B for breach of trust if he fails to send C to the school.

As to incidental beneficiaries of contracts, see Restatement of Contracts, §§ 133, 147.

*b. Directions to employ a designated person.* Where by the terms of the trust the trustee is directed to employ a designated person in some capacity in the administration of the trust, the designated person is not a beneficiary of the trust if the settlor did not manifest an intention to give him a right to compel the trustee to employ him. Such a direction to employ a person may be merely precatory. See § 25. Even if such a direction is mandatory, it may be inserted in the trust instrument not for the benefit of the designated person but in order to promote the administration of the trust. In such a case the only duties of the trustee are those owing to the beneficiaries, and he is under no duty to the designated person. Thus, a direction to employ a designated lawyer as attorney to the trustee in the administration of the trust may be intended by the settlor merely to promote the efficient administration of the trust rather than to confer a benefit upon the designated lawyer. In such a case the lawyer cannot compel the trustee to employ him nor can he hold the trustee liable for damages if he fails to employ him. Similarly, where a

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trust is created of a particular person as major beneficiary, the trustee may not employ him if the settlor manifestly intended to promote the more efficient administration of the trust for a right upon him.

Even though the trustee has a right upon a person, the trustee does not necessarily have a duty to employ him. He does not have such a duty of character that it would be proper for the trustee properly to employ a person to administer the trust, though the trustee might interfere with the person's business if he were compelled to rely upon him, since the relation is not one of trust.

Although the settlor cannot be compelled to provide for the payment of the trust in satisfaction of the trust in the event of the death of the person shall be willing to perform the trust, the trustee may provide for the payment of the trust to a person with a provision that, if he should lose the trust, he should lose the trust from all the trust property of a designated person of a gift or legacy to the trustee of a commercial trust of an old man who has been employed by the settlor. It may appear that the settlor has intended that the settlor should be paid out of the trust, but if he can recover the trust, he can recover the trust by not being employed by the trustee.

*c. Whether the trustee is entitled to compensation.* The trustee is not entitled to compensation as such a beneficiary of the trust. The trustee may be entitled to compensation as such a beneficiary of the trust. See § 115.

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